

RECEIVED
CENTRAL FAX CENTER
MAY 01 2008

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through 05/01/2008. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MSDI-219/PC902.00

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on May 1, 2008Signature Douglas A. CollierTyped or printed name Douglas A. Collier

Application Number

10/769,569

Filed

January 30, 2004

First Named Inventor

Roy Lim

Art Unit

3733

Examiner

Anuradha Ramana

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record. 43,556
Registration number _____Douglas A. Collier

Signature

Douglas A. Collier

Typed or printed name

(317) 238-6333

Telephone number

 attorney or agent acting under 37 CFR 1.34.May 1, 2008

Registration number if acting under 37 CFR 1.34 _____

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8189 and select option 2.

RECEIVED
CENTRAL FAX CENTER

007

MAY 01 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)	Before the Examiner
Roy Lim)	Anuradha Ramana
)	
Application Serial No. 10/769,569)	Group Art Unit 3733
)	
Filed: January 30, 2004)	Ref. No. MSDI-219/PC902.00
)	
INSTRUMENTS AND METHOD FOR)	
MINIMALLY INVASIVE SPINAL)	May 1, 2008
STABILIZATION)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

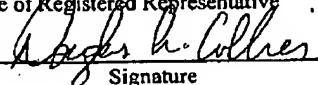
Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

In response to the Final Office Action dated November 1, 2007, please enter and consider the following. A Notice of Appeal, and form PTO/SB/33 Pre-Appeal Brief Request for Review is submitted herewith along with the fee under 37 CFR 41.20(b)(1). No extensions of time are believed due since a response to the Final Office Action was submitted December 5, 2007, within two months of the mailing of the Final Office Action, and no subsequent Advisory Action or other communication from the USPTO has been received. However, please provide any extensions of time that may be necessary and charge any additional fees due, or credit any overpayment, to Deposit Account 12-2424, but not including the payment of issue fees.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on:

May 1, 2008
 (Date of Transmission)

Douglas A. Collier
 Name of Registered Representative


 Signature

May 1, 2008
 Date of Signature

Pre-Appeal Brief Request for Review
 Serial No. 10/769,569
 Atty. Docket No. MSDI-219/PC902.00
 Page 1 of 2

RECEIVED
CENTRAL FAX CENTER
MAY 01 2008

008

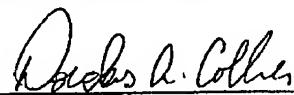
REMARKS

In the Final Office Action mailed November 1, 2007, claims 1-20, 50, 52-58, 91-116, 120-137 were pending. Claims 19, 53-56, 105, 120 and 130 were withdrawn as being directed to non-elected species. Claims 50, 52, 57-58, 106-116, 121-129 and 131-137 were allowed, and claims 5, 7-18, 20, 94 and 96-104 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 1-4, 6, 91-93, and 95 stand rejected. This Pre-appeal Brief Request for Review requests entry of the amendment filed December 5, 2007. Entry is proper since the amendment removes all issues for appeal and places the application in condition for allowance.

The amendment submitted on December 5, 2007, was presented to rewrite objected to claims in allowable form and place the application in condition for allowance. Specifically, claim 1 was amended to include claims 2 and 5, and claims 2 and 5 were cancelled. Claims 3 and 6 are amended to depend from claim 1 in view of the cancellation of claim 2. Claims 7, 10 and 20 were rewritten in independent form incorporating the version of claim 1 prior to the above amendment of claim 1. Claim 91 was amended to include claims 92-94 therein, and claims 92-94 were cancelled. Claims 96 and 97 were rewritten in independent form incorporating claim 91 therein in its version prior to the above amendment. Withdrawn claim 19, 53-56, 105, 120 and 130 depend from allowable base claims, and reinstatement of the withdrawn claims was requested.

Upon entry of the December 5, 2007 amendment, no remaining issues remain for appeal and the present application is in condition for allowance. Therefore, entry of the December 5, 2007 amendment is proper and a Notice of Allowance is hereby requested.

Respectfully submitted,

By: 
 Douglas A. Collier, Reg. No. 43,556
 Krieg DeVault LLP
 One Indiana Square, Suite 2800
 Indianapolis, Indiana 46204-2079
 (317) 238-6333 (voice)

Pre-Appeal Brief Request for Review
 Serial No. 10/769,569
 Atty. Docket No. MSDI-219/PC902.00
 Page 2 of 2